

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 568 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements? YES
  2. To be referred to the Reporter or not? YES :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? NO
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO
  5. Whether it is to be circulated to the Civil Judge? NO:

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PARWATIBEN WD/O RAMSINH RAJPUT

Versus

PARULBEN WD/O RAJENDRASING RAJPUT  
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Appearance:

MR B.C. DAVE FOR MR SATISH R PATEL for Petitioners  
MR BM GUPTA for Respondents No. 1 to 3  
MR KP RAVAL for Respondent No. 4  
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/1999

C.A.V. JUDGEMENT

1. Rule. Learned Advocate Mr. B.M. Gupta for  
Respondents No. 1 to 3 and learned APP Mr. K.P. Raval  
for respondent No.4 State waive service of rule on behalf  
of the respective parties.

2. In this Revision, this court is called upon to examine the scope and jurisdiction of the Executive Magistrate under Sections 145 and 146 of the Criminal Procedure Code and the propriety of the order passed by the learned Executive Magistrate, under Section 146(1) of the Criminal Procedure Code for attachment of the property.

3. As per the brief facts of the case, present petitioner No.1 Parvatiben is the widow of Ramsinh Rajput and petitioner No.2 - Lilaben is the daughter of Ramsinh Rajput. Opponent No.1 Parulben, is the daughter-in-law of petitioner No.1 i.e. widow of Rajendrasingh Rajput, a deceased son of petitioner No.1. There is a property, i.e. a shop No.9 in Nirav Shopping Centre on the ground floor, which is situated at Final Plot No.106, T.P. Scheme No.7, near Old Railway Crossing, Khokhra, Ahmedabad. It is the case of the present petitioner Parvatiben that his late husband Ramsinh Rajput had purchased the above mentioned property by a registered document, and thereafter, since the husband of petitioner No.1 Ramsinh Rajput died, the petitioners were doing business in the above mentioned shop. On the record, the son of the petitioner and the husband of opponent No.1 Rajendrasingh Rajput was also there because he was in joint possession. Thereafter, son of the petitioner No.1 and husband of opponent No.1 Rajendrasingh Rajput also died on November 20, 1997, and thereafter, opponent No.1 tried to interfere in the possession of the shop, which was in the possession of present petitioners. It appears that some criminal complaints have been filed between the parties. A Civil Suit, being Regular Civil Suit No. 4356 of 1998 has also been filed by the present petitioners against the present opponents in the City Civil Court for permanent injunction restraining the defendants against any transfer or alienation of the said shop, restraining the defendants from interfering in the enjoyment of possession of the suit shops by the plaintiffs i.e. the present petitioners and for other reliefs. The City Civil Court was pleased to grant an interim stay in favour of the plaintiffs and restrained the defendants i.e. present opponents from transferring or alienating the said suit shop, in any manner. However, no ad interim stay appears to have been granted so far as possession is concerned. As against this, it is the case of the opponents that the husband of the opponent No.1 Rajendrasingh Rajput i.e. son of petitioner No.1 has taken defence that the said shop, in fact, has been purchased by deceased Rajendrasingh Rajput, husband of opponent No.1 from the owner, i.e. the trustees of Vora Family Trust, vide Registered document

dated 17.01.1996 vide Index No.156. Thereafter, the possession of suit shop and ownership are with opponent No.1. As per the case of opponent No.1, her late husband Rajendrasinh Rajput was doing business in the name and style of "Meenakshi Construction" in the said shop and opponent No.2 Bhagwansahaya Kaniyalal, in association with her late husband Rajendrasinh Rajput was doing business in the name and style of "Mona T.V. Centre" and opponent No.3 Devendrasinh Amarjet was having a STD PCO booth in the said shop and even after the death of Rajendrasinh Rajput, the business in the name and style of 'Mona T.V. Centre and STD PCO Booth' were continuing.

4. In the above mentioned set of facts, the present petitioners after filing the above mentioned suit in the City Civil Court, preferred one Application before the Executive Magistrate, bearing 23 of 1998, under Sections 145 and 146 of the Criminal Procedure Code. In the said application, it was stated that the present opponents intended to encroach upon the possession of petitioners and, therefore, an Enquiry under Section 145 is required. Learned Executive Magistrate, Ahmedabad, forwarded this Application which was dated December 29, 1998 to the Maninagar Police Station, Ahmedabad, for an enquiry. In an enquiry, vide letter dated 19th January, 1999, Maninagar Police Station informed the Executive Magistrate with details that there was a possibility of breach of peace because the parties had dispute regarding the said Shop No.9. Therefore, the Executive Magistrate passed an order under Section 145(1) of the Criminal Procedure Code and Notices were issued to the opponents on 29th January, 1999, calling upon them to appear before the Executive Magistrate with the evidence of title of possession regarding the suit shop on 15th February, 1999. Thereafter, opponents appeared before the Magistrate. Executive Magistrate recorded the evidence of both the parties and took into consideration the documents produced, and ultimately, vide his Order dated September 30, 1999, recorded the finding that there was every possibility of breach of peace between the parties regarding the shop in question and that he was not satisfied as to which party was, in fact, in possession of the property in question on the date of passing of the order under Section 145(1) of the Code and, therefore, the learned Executive Magistrate pleased to pass an order to attach the said property and to put a seal on Shop No.9

5. The present opponents - (1) Parulben, widow of Rajendrasinh Rajput, (2) Bhagwansahaya Kaniyalal and (3) Devendrasing Amarjet, being aggrieved by the order passed

by the learned Executive Magistrate, sealing the property in question, filed the Criminal Revision Application before the learned City Civil and Sessions Judge, Court No. 16 at Ahmedabad, being Criminal Revision Application No. 347 of 1999. After hearing both the parties, learned Addl. Sessions Judge allowed the Revision Application vide its Order dated 27th October, 1999 and the order passed by the Executive Magistrate on 30th September, 1999 was set aside and quashed.

6. Being aggrieved by the above said decision on Revision Application No. 347 of 1999 passed by the learned Addl. Sessions Judge, Court No.16, this Criminal Revision Application is preferred by the original petitioners, who are the original petitioners before the Executive Magistrate.

7. Learned Advocate Mr. B.C. Dave for Mr. S.R. Patel on behalf of the petitioners, learned Advocate Mr. B.M. Gupta for Respondents No. 1 to 3 and learned APP Mr. K.P. Raval for Respondent No.4 were heard.

8. So far as this Revision is concerned, on behalf of the petitioners, it was urged by Mr. Dave that firstly the order of the learned Executive Magistrate being interlocutory in nature because after the decision of the Civil Court, final order was to be passed, Revision before the court of City Sessions Judge was not maintainable and, therefore, the same is required to be rejected and order of the Executive Magistrate is required to be upheld. Secondly, Mr. Dave urged that the Executive Magistrate after following due process under Sec. 145(1) of the Criminal Procedure Code and after making an enquiry as mentioned in Section 145 of the Code, has come to the conclusion that he was not satisfied as to which of the parties was in possession of the property in question at the time of passing of the order under Sec. 145(1) of the Criminal Procedure Code and, therefore, he passed an order to seal the property till the decision of the Civil Court. There is nothing erroneous or wrong on the face of the record so as to interfere with the order passed by the Executive Magistrate by the Addl. Sessions Court or by this Court in the revisional jurisdiction. Mr. Dave cited some authorities of some High Courts. Mainly, he relied upon the decision of the Apex Court in the matter of MATHURALAL vs. BHANWARLAL, reported in AIR 1980 SC 242, wherein the Apex Court has held that where attachment is made on the ground of emergency, the Magistrate has jurisdiction to proceed with the enquiry under Section 145. The Magistrate is not required to wait for

determination of rights of parties by the competent court. Relying on this decision, it has been urged by learned Advocate Mr. Dave that the Magistrate was empowered to pass an order and the same cannot be lightly interfered with.

9. On the other hand, learned Advocate Mr. B.M. Gupta has relied upon a decision of the Hon'ble High Court of Gujarat in the matter of SAYED MOHMAD ZAYAUDDIN SHAH SAHIBMIYAN ALTI vs. NOORBIBI @ VAZIRANBIBI HASANBHAI, reported in GLR 1981 (22) 120, wherein after relying a decision in Madhu Limaye vs. State of Maharashtra, reported in AIR 1978 SC 47, this Court has ruled that the order passed by the Executive Magistrate is not an interlocutory order. Learned Advocate Mr. B.M. Gupta has further argued that a civil litigation is pending between the parties, wherein the dispute of possession is involved, civil court has seized of the matter and the matter is pending for consideration before the Civil Court. In these circumstances, the right of the parties are still to be decided, Executive Magistrate should refrain from passing any order of sealing of the property and wait for the decision of the Civil Court. Learned Advocate Mr. B.M. Gupta has relied upon a decision of the Apex Court in the matter of RAM SUMER PURI MAHANT vs. STATE OF UP, reported in AIR 1985 SC 472.

10. The impugned order of learned City Sessions Judge has come up before this Court under revisional jurisdiction. Therefore, in the scope of revisional jurisdiction, this court is required to consider whether the order of learned City Sessions Judge is erroneous, improper or wrong on the face of it or contrary to the record of the case. Learned City Sessions Judge observed that the Executive Magistrate undoubtedly passed the order to seal the property with full knowledge that the civil litigation is pending between the parties, in which the possession of the disputed property is involved. City Sessions Judge has observed that under Section 146, the Executive Magistrate is empowered to pass order under Section 146 to seal the property in three circumstances, namely, (i) where the Magistrate is satisfied that the case is one of emergency, (ii) if the Magistrate after inquiry holds that none of the parties was in possession on the date of preliminary order, and (iii) the Magistrate is unable to satisfy himself as to which of the parties was in possession on the appropriate date. Learned City Sessions Judge has also observed that the Executive Magistrate has found this case in category No. (iii) above. Learned Sessions Judge has further

observed that since this was not a case of emergency and since the Civil Court was seized of the civil matter between the parties in which the question of possession was involved, the Executive Magistrate should refrain from passing the impugned order. The learned Sessions Judge has relied upon the decision of the Apex Court in the matter of RAM SUNDER PURI MAHANT v. STATE OF U.P., reported in 1985 SC 472.

11. So far as first contention of the learned Advocate for the petitioners regarding interlocutory order is concerned, the position of law is very well made clear by a decision of this Court in the matter of Mohmad Zayauddin vs. Noorbibi (supra). After relying the decision of the Apex Court, this Court ruled that the order which affects ultimately the rights of the parties are not the interlocutory order and hence the order passed by the Executive Magistrate under Section 146(1) of the Criminal Procedure Code by no stretch of reasonings said to be an interlocutory order. This makes abundantly clear that the contentions raised on behalf of the petitioners that the impugned order being interlocutory in nature, not subject to revisional jurisdiction is required to be negatived. So far as the other contention of learned Advocate for the petitioners is concerned, the learned Sessions Judge has rightly observed that this was not a case of emergency in which the Executive Magistrate had passed the order for sealing of the property because as mentioned above, case falls in category No.3 that the Executive Magistrate was unable to satisfy himself as to who was in possession on the date of passing of the order under Section 145(1) for sealing of the property. At the time of passing of the order under category No.3 above, the Executive Magistrate ought to have borne in mind that a civil litigation is pending between the parties. In the above mentioned case of Ram Sumer Puri (supra), the Apex Court has observed that while a civil court is seized of the matter regarding the possession, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver. Learned Addl. City Sessions Judge has rightly placed reliance on this decision and had allowed the Revision. So far as the decision of the Supreme Court as cited on behalf of the petitioners in the matter of Mathuralal vs. Bhanwarlal Noorbibi (supra) is concerned, the facts and the principle both of the above mentioned case will not be helpful to the present petitioners because the question which came up for consideration before the Apex Court in

the case of Mathuralal vs. Bhanwarlal (supra) was whether in the case of emergency after passing of an order under Section 145 (1) for sealing of the property, whether the Executive Magistrate had jurisdiction to proceed with the enquiry. The Apex Court ruled in positive, but in this case, this is admittedly not a case of emergency, but simply the Executive Magistrate could not satisfy himself that who was in possession at the time of passing of the order under Section 145(1) and, therefore, learned Addl. Sessions Judge was right in holding that since civil litigation is pending between the parties, Executive Magistrate ought not to have passed the above said order.

12. On scrutinising the record, going a step ahead from what is observed by the court of Addl. City Sessions Judge, it is felt that the present case would not even fall within any of the three categories mentioned above, when a matter is pending before a Civil Court, wherein the possession is disputed between the parties, then, it could not be said to be a case of "Magistrate could not satisfy himself as to which of the parties was in possession at the time of passing of the order under Sec. 145(1) of the Criminal Procedure Code." Once it comes to the knowledge of the Executive Magistrate that the Civil Court is seized of the matter regarding the possession, being a criminal court, Executive Magistrate cannot invoke its jurisdiction in category No.3 mentioned above. There are obvious reasons for this proposition. One and most important reason is a party litigating before a civil court and which is likely to be declared by the civil court to be entitled to be in possession, would be deprived of its legal rights of having enjoyment of the possession by the order of the Executive Magistrate, and second reason is when the parties are already on litigation, at any time, may approach the civil court for proper adjudication at the interim stage also and that order of the Civil Court will be binding finally to the parties. While the order under Section 145 is only temporary orders and a provisional police order only for the maintenance of peace in the locality. The order of the Executive Magistrate in such circumstances would result in ouster and summary eviction of a party who is legally entitled to possession. Further when civil litigation is pending between parties, such order of Executive Magistrate will amount to interference in adjudication process of civil court and thereby will be obstruction to course of justice.

13. Now reverting to Section 145 of the Criminal Procedure Code, it clearly lays down in Section 145

sub-sec. (10) that nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under Section 107. Therefore, in the circumstances which have arisen in this case, since the prime object of Sections 145 and 146(2) is to maintain peace, the Executive Magistrate may resort to Section 107 of the Criminal Procedure Code, if the Executive Magistrate is satisfied that breach of peace is likely between the parties. But by police order, the Executive Magistrate cannot assume jurisdiction of Civil Court and to deprive indirectly any party of the enjoyment of the possession of property to which a Civil Court in future may declare that the said party may be entitled to retain the possession.

14. In this view of the matter, there is no substance in the Revision Application and the same is dismissed. Rule is discharged. The interim order of status quo granted by this court stands vacated.

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